

section should be deleted from the contract. With the inclusion of the 20% advertising commission provision, New York Telephone argues, MCI is attempting to establish a contractual benefit with respect to directory listing. Moreover, New York Telephone argues that MCI has established this contractual obligation without including the party that is responsible for directory listing, the NYNEX Information Resources Company (NIRC).

We have reviewed New York Telephone's arguments and conclude that this is an area that is not within the ambit of §§251 and 252 arbitrations. New York Telephone's petition for rehearing on this point is granted and §7.1.5.12 should be deleted from Attachment VIII.

#### OTHER TERMS OF THE AGREEMENT

The Agreement is effective for three years, renewing automatically thereafter absent notice by either party. It enables MCI to obtain wholesale bundled New York Telephone local exchange service to resell. It also allows MCI to provide local exchange service through a combination of its own and New York Telephone's facilities by purchasing unbundled network elements, ancillary services and functions and additional features separately or in combination, and interconnecting to its own network components, using virtual or physical collocation arrangements. It provides for technically efficient transmission and termination of calls. The Agreement includes operational support and procedures to accommodate these objectives. The outcomes of the arbitration and the voluntary final offer process are incorporated in the Agreement.

Part A contains the general terms and conditions of the Agreement; a series of attachments specifies rates and specific terms. Rates, contained in Attachment I, include temporary rates subject to refund or reparation upon our establishment of permanent rates. Rates are included in Attachment I for reciprocal compensation, information services billing and collection, busy line verification, transit service, interim number portability, collocation, poles, conduits, and rights of

way, network elements, resale of New York Telephone's retail services, and non-recurring service connection. Attachment II establishes non-price terms and conditions for resale; Attachment III establishes non-price terms and conditions for network elements and Attachment IV for interconnection. Collocation terms are set in Attachment V, rights of way terms in Attachment VI, and number portability in Attachment VII. Attachment VIII concerns business process requirements, including operation support services terms and conditions, and establishing the requirement for parity in network element ordering and provisioning support, and in resale provisioning. Attachment IX contains security requirements protecting both parties' equipment and the network; Attachment X concerns credits and liquidated damages for performance standards failures.

#### FINDINGS

The Agreement has been reviewed in accordance with applicable federal and state standards. Pursuant to the standards defined in §§252(e)(2)(A) and (e)(2)(B), the Agreement is consistent with the Act, subject to the interpretations herein. With the exception of those discussed herein, we approve the arbitrated provisions as in compliance with §§251 and 252 of the Act and applicable FCC regulations.<sup>1</sup> We approve the negotiated provisions as non-discriminatory and consistent with the public interest, convenience and necessity, including state law and Commission policy.<sup>2</sup> With respect to the discussed provisions as to which New York Telephone asserts technical impossibility of performance, New York Telephone will have 30 days to file substitute measurements of parity that established reliable objective measurements of the service quality it provides itself, its affiliates, and, where appropriate, its customers. With respect to the delay credits

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<sup>1</sup> 47 U.S.C. §252(d).

<sup>2</sup> 47 U.S.C. §252(e)(2)(A).

requirement in Attachment X, §3.1.2, the section is rejected as inconsistent with §251.<sup>1</sup> With respect to the requirement to provide sub-loop unbundling, MCI will have 30 days to demonstrate that failure to provide this element would impair its ability to offer service, consistent with the Eighth Circuit standard.

With respect to Attachment VIII, §7.1.5.12, concerning directory listings, New York Telephone's request for reconsideration is granted and this provision is stricken.

#### Fulfillment of §271 Obligations

New York Telephone's compliance with the conditions for Bell Operating Company entry into intraLATA services pursuant to 47 U.S.C. §271 is not under consideration in this proceeding. This determination on the Agreement does not constitute a decision concerning New York Telephone's obligations pursuant to §271 of the Act.

#### Amendments and Modifications

Part A, §20.16 of the Agreement provides for amendment or modification with the consent of both parties. We have interpreted the Act as requiring that state commissions must review all negotiated agreements, including those merely seeking modifications.<sup>3</sup> Thus, subsequent modifications or amendments to this Agreement, of any kind, must be approved by the Commission.<sup>4</sup>

#### CONCLUSION

Based upon a review of its terms and the comments of the parties, this interconnection agreement is approved as consistent with §§251 and 252 of the Act, state law, and the

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<sup>1</sup> New York Telephone's suggested language contained in Appendix B to its August 15, 1997 comments appears consistent with §251.

<sup>3</sup> 47 U.S.C. §252(e)(1).

<sup>4</sup> 47 U.S.C. §§252(e) and (h).

rules of this Commission, subject to the interpretations discussed herein.

This approval should not be construed as pre-approval of any future petitions for rate recovery of costs incurred pursuant to the Agreement. As noted, this approval also does not constitute a determination concerning New York Telephone's obligations pursuant to §271 of the Act, although this interconnection agreement will be taken into consideration in future determinations of New York Telephone's compliance with that section, including the competitive checklist. This Agreement is subject to change as may be required by a regulatory authority or court in the exercise of its lawful jurisdiction.

Pursuant to §252(h) of the Act, a copy of this Agreement will be made available for public inspection and copying within ten days of the issuance of this order. Subsequent amendments or modifications of this Agreement shall be submitted to, and acted upon by, this Commission.<sup>1</sup>

The Commission Orders:

1. The petition of New York Telephone for approval of an interconnection agreement between New York Telephone Company and MCImetro Access Transmission Services, Inc. is hereby granted, with the exception of sections discussed above concerning service quality measurement and subloop unbundling, Attachment X, §3.1.2, and Attachment VIII, §7.1.5.12 concerning directory listings, subject to the interpretations discussed herein. Subsequent filings shall not delay the effective date of the Agreement.

2. New York Telephone may file, within 30 days of the issuance of this order, service quality standards substituting for those it deems technically impossible to implement.

3. MCI may file, within 30 days of the issuance of this order, a petition to demonstrate that it is entitled to sub-loop unbundling pursuant to the standards enunciated herein.

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<sup>1</sup> 47 U.S.C. §§252(e) and (h).

4. This proceeding is continued.

By the Commission,

(SIGNED)

JOHN C. CRARY  
Secretary

Bell Atlantic  
1095 Avenue of the Americas  
New York, NY 10036

7237 OCT 1 1997

Donald C. Rowe  
Counsel

Office: 212-395-7010  
Fax: 212-768-7568



October 10, 1997

**BY HAND**

Honorable John C. Crary,  
Secretary  
New York Public Service Commission  
Three Empire State Plaza  
Albany, New York 12223-1350

Re: **Case 96-C-0787: Interconnection Agreement between  
New York Telephone Company and MCImetro Access  
Transmission Services, Inc.**

Dear Secretary Crary:

In accordance with the Order Approving Interconnection Agreement, Rejecting Portions Thereof, And Granting Reconsideration, issued in this proceeding on October 1, 1997, as well as § 252(h) of the Telecommunications Act of 1996 (the "Act"), New York Telephone Company (d/b/a "Bell Atlantic - New York") and MCImetro Access Transmission Services, Inc. ("MCI") are herewith filing an original and five (5) copies of their Interconnection Agreement for the State of New York. Amendments have been made in the Interconnection Agreement to reflect the Commission's determinations made in the Order, and the Agreement has been conformed with the parties' mutual agreements concerning language clarifications reached during the review process.

Pursuant to the Commission's Notice of Procedures issued June 14, 1996, copies of this Agreement and this letter are being served on all active parties in Case 95-C-0657 and 93-C-0103, as well as all telecommunications carriers from which NYT has received a request for interconnection, services or network elements pursuant to 47 U.S.C. § 252.

Notice is hereby provided that MCIIm is represented by:

Richard Fipphen, Esq.  
Five International Drive  
Rye Brook, New York 10573-1095  
Telephone: (914) 251-2111  
Fax: (914) 251-2287

If you have any questions regarding this matter, please feel free to call either Mr. Fipphen or me.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Fipphen'.

Enclosure

cc: Hon. Eleanor Stein (Hand Delivery)  
Kathleen Burgess, Esq. (Hand Delivery)  
Dennis Taratus (Hand Delivery)  
Richard Fipphen, Esq. (by Overnight Delivery)  
Service List (by U.S. Mail)

## **PART A**

# **GENERAL TERMS AND CONDITIONS**



**PART A  
GENERAL TERMS AND CONDITIONS  
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## **AGREEMENT**

This Agreement ("Agreement") is effective as of the Effective Date, by and between MCImetro Access Transmission Services LLC ("MCIIm"), on behalf of itself and its Affiliates, a Delaware corporation with offices at 8521 Leesburg Pike, Vienna, Virginia 22182, and New York Telephone Company d/b/a NYNEX ("NYNEX" or "NYT"), a New York corporation with offices at 1095 Avenue of the Americas, New York, New York 10036.

**WHEREAS**, the Parties are entering into this Agreement to set forth the respective obligations of the Parties and the terms and conditions under which the Parties will interconnect their networks and provide other services as required by the Act (as defined below) and additional services as set forth herein; and

**WHEREAS**, the Parties wish to interconnect their local exchange networks in a technically and economically efficient manner for the transmission and termination of calls, so that subscribers of each can seamlessly receive calls that originate on the other's network and place calls that terminate on the other Party's network, and for MCIIm's use in the provision of exchange access ("Local Interconnection"); and

**WHEREAS**, MCIIm wishes to purchase Telecommunications Services for resale to others ("Local Resale" or "Services for Resale"), and NYNEX is willing to provide such service; and

**WHEREAS**, MCIIm wishes to purchase on an unbundled basis network elements, ancillary services and functions and additional features ("Network Elements"), separately or in any combination, and to use such services for itself or for the provision of its Telecommunications Services to others, and NYNEX is willing to provide such services; and

**WHEREAS**, the Parties intend the rates, terms and conditions of this Agreement, and their performance of obligations thereunder, to comply with the Act, as amended by the Telecommunications Act of 1996, the Rules and Regulations of the Federal

Communications Commission ("FCC"), and the orders, rules and regulations of the New York State Public Service Commission ("Commission").

**NOW, THEREFORE**, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, MCI and NYNEX hereby agree as follows:

## **SECTION 1 DEFINITIONS**

Certain terms used in this Agreement shall have the meanings specified in Part B - DEFINITIONS attached hereto and made a part hereof, unless otherwise expressly defined herein. Other terms used but not defined herein will have the meanings ascribed to them in the Act and the FCC Rules and Regulations.

## **SECTION 2 INTERPRETATION AND CONSTRUCTION**

All references to Parts, Sections, Attachments and Annexes shall be deemed to be references to Sections of, and Parts, Attachments and Annexes to, this Agreement unless the context shall otherwise require. The headings and numbering of the Sections, Parts, Attachments and Annexes are inserted for convenience of reference only and shall not be construed to define or limit any of the terms herein, or to affect the meaning of this Agreement. Unless the context shall otherwise require, any reference to any agreement, any other instrument, statute, regulation, rule or tariff shall be to such agreement, instrument, statute, regulation, rule or tariff as amended and supplemented from time to time (and, in the case of a statute, regulation, rule or tariff, to any successor provision).

## **SECTION 3 SCOPE OF AGREEMENT**

3.1 This Agreement, including all Parts, Sections, Attachments and Annexes, specifies the rights and obligations of each Party with respect to the purchase and sale of Local Interconnection, Local Resale, Network Elements, access to poles, ducts, Conduits and ROW, Interim Number Portability, dialing parity, Collocation and any other services set

forth herein. This Part A includes all the general terms and conditions as defined in this Agreement and descriptions of the services, pricing, technical and business requirements and physical and network security requirements are contained in the Parts, Attachments and Annexes attached hereto.

3.2 The Parties shall provide the services pursuant to this Agreement. NYNEX shall provide the unbundled Network Elements in any technically feasible combination requested by MCI.

#### **SECTION 4 TERM AND TERMINATION**

4.1 This Agreement shall become binding upon the Parties as of the Effective Date. The initial term of this Agreement shall be three (3) years (the "Term") which shall commence on the Effective Date. Absent the receipt by one Party of written notice from the other Party at least one hundred twenty (120) days prior to the expiration of the Term to the effect that such Party intends to terminate this Agreement, this Agreement shall automatically renew and shall remain in full force and effect on and after the expiration of the Term.

4.2 If pursuant to Section 4.1 the Agreement continues in full force and effect after the expiration of the Term, either Party may terminate the Agreement by delivering one hundred twenty (120) days' advance written notice to the other Party of the intention to terminate this Agreement.

4.3 In the event of breach of any material provision of this Agreement by either Party, the non-breaching Party shall give the other Party written notice thereof, and:

4.3.1 If such material breach is for non-payment of amounts due hereunder pursuant to Attachment VIII, the breaching Party shall cure such breach within thirty (30) days of receiving such notice. The non-breaching Party shall be entitled to pursue all available legal and equitable remedies for such breach. Amounts disputed in good faith and withheld or set off shall not be deemed "amounts due hereunder" for the purpose of this provision.

4.3.2 If such material breach is for any failure to perform in accordance with this Agreement, which, in the sole judgment of the non-breaching Party, adversely affects the non-breaching Party's subscribers, the non-breaching Party shall give notice of the breach and the breaching Party shall cure such breach to the non-breaching Party's reasonable satisfaction within ten (10) days or within a period of time equivalent to the applicable interval required by this Agreement, whichever is shorter, and if the breaching Party does not, the non-breaching Party may, at its sole option, terminate this Agreement. The non-breaching Party shall be entitled to pursue all available legal and equitable remedies for such breach.

4.3.3 If such material breach is for any other failure to perform in accordance with this Agreement, the breaching Party shall cure such breach to the non-breaching Party's reasonable satisfaction within forty-five (45) days, and if it does not do so, the non-breaching Party may, at its sole option, terminate this Agreement. The non-breaching Party shall be entitled to pursue all available legal and equitable remedies for such breach.

**4.3.4 [INTENTIONALLY LEFT BLANK]**

**4.4 Upon termination or expiration of this Agreement in accordance with this Section 4:**

(a) Each Party shall promptly pay all amounts (including any late payment charges) owed under this Agreement;

(b) Each Party shall continue to perform its obligations and provide its services described herein until such time as a survivor Agreement between the Parties is entered into; provided, however, that if the Parties are unable to reach agreement within six (6) months after the termination or expiration of this Agreement, either Party has the right to submit this matter to the Commission for resolution. Until a survivor agreement is reached or the Commission resolves this matter, whichever is sooner, the terms, conditions, rates and charges stated herein will continue to apply, subject to a true-up based on the Commission action, if any; and

(c) In the event of any termination under this Section 4, the Parties agree to provide for an uninterrupted transition of services to each other or another vendor designated by such Party.

## **SECTION 5 Warranties**

5.1 As more specifically set forth herein, each Party shall perform its obligations hereunder at parity, as embodied in the performance provisions set forth in 47 U.S.C. § 251, and any implementing regulations thereunder, as those provisions may apply to the Party and obligation in question.

5.2 As more specifically set forth in Attachment II, NYNEX shall provide Local Resale at parity.

5.3 As more specifically set forth in Attachment III, NYNEX shall provide Network Elements at parity.

5.4 As more specifically set forth in Attachment IV, NYNEX shall provide Interconnection at parity and on a non-discriminatory basis. MCI shall provide Interconnection on a non-discriminatory basis.

5.5 As more specifically set forth in Attachment V, NYNEX shall provide Collocation in accordance with the legally effective rules, regulations and orders of the FCC and the Commission.

5.6 As more specifically set forth in Attachment VI, NYNEX shall provide non-discriminatory access to Poles, Ducts, Conduits, and ROW owned or controlled by NYNEX, in accordance with the requirements of section 224 of the Act and legally effective rules, regulations and orders of the FCC and the Commission.

5.7 As more specifically set forth in Attachment VII, NYNEX and MCI shall provide Interim Number Portability and Number Portability in accordance with the legally effective rules, regulations and orders of the FCC and the Commission.

5.8 As more specifically set forth in Attachment VIII, NYNEX and MCIIm shall meet Business Process Requirements.

5.9 As more specifically set forth in Attachment VIII, NYNEX shall provide non-discriminatory access to telephone numbers for as long as NYNEX remains the code administrator for the North American Numbering Plan.

5.10 As more specifically set forth in Attachment VIII, NYNEX and MCIIm shall provide dialing parity in accordance with the legally effective rules, regulations and orders of the FCC and the Commission.

5.11 As more specifically set forth in Attachment IX, NYNEX and MCIIm shall meet security requirements, to the extent applicable to the security requirement in question.

5.12 As more specifically set forth in Attachment X, NYNEX shall provide performance reporting and credits.

**EXCEPT AS SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTIES WITH RESPECT TO ITS SERVICES, WHETHER EXPRESS OR IMPLIED, WRITTEN OR ORAL, IN FACT OR IN LAW. THE WARRANTIES SET FORTH IN THIS AGREEMENT ARE A PARTY'S EXCLUSIVE WARRANTIES WITH RESPECT TO ITS SERVICES AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, IN FACT OR IN LAW. EACH PARTY DISCLAIMS ANY AND ALL OTHER WARRANTIES WITH RESPECT TO ITS SERVICES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES AGAINST INFRINGEMENT.**

## **SECTION 6 COVENANTS**

6.1 Neither Party shall use any service related to or using any of the services provided in this Agreement in any manner that interferes with other persons in the use of their service, prevents other persons from using their service, or otherwise impairs the quality of service to other carriers or to either Party's end users. Upon such



impairment, the affected Party shall provide the other Party notice and the other Party shall use reasonable efforts to remedy the impairment.

## **SECTION 7 CHARGES AND PAYMENT**

7.1 In consideration of the services provided by a Party under this Agreement, the other Party shall pay the charges set forth in Attachment I. The billing and payment procedures for charges incurred by a Party hereunder, including disputed amounts, are set forth in Attachment VIII.

## **SECTION 8 REGULATORY APPROVAL**

8.1 This Agreement, and any amendment or modification hereof, will be submitted to the Commission for approval in accordance with Section 252 of the Act. In the event any governmental authority or agency rejects any provision hereof, the Parties shall negotiate promptly and in good faith such revisions as may reasonably be required to achieve approval.

8.2 In the event the FCC or the Commission promulgates rules or regulations, or issues orders, or a court of competent jurisdiction issues orders, which make unlawful any provision of this Agreement, or which materially reduce or alter the services required by statute or regulations and embodied in this Agreement, then the Parties shall negotiate promptly and in good faith in order to amend the Agreement to substitute contract provisions which conform to such rules, regulations or orders. In the event the Parties cannot agree on an amendment within thirty (30) days after the date any such rules, regulations or orders become effective, then the Parties shall resolve their dispute under the applicable procedures set forth in Section 16 (Dispute Resolution Procedures) hereof.

8.3 In the event that any legally effective legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of MCI or NYNEX to perform any material terms of this Agreement, MCI or NYNEX may, on thirty (30) days written notice (delivered not later than thirty (30) days following the date on which such action has become legally binding or has otherwise become legally

effective) require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required.

8.4 The Parties intend that any additional services requested by either Party relating to the subject matter of this Agreement that are not offered hereunder will be incorporated into this Agreement by amendment upon agreement by the Parties.

8.5 The Parties understand and agree that this Agreement will be filed with the Commission and may thereafter be filed with the FCC. Subject to the Parties' rights to challenge the Agreement as permitted by applicable law, the Parties covenant and agree that this Agreement is satisfactory to them as an agreement under Section 251 of the Act. Each Party covenants and agrees to fully support approval of this Agreement by the Commission or the FCC under Section 252 of the Act without modification. The Parties, however, reserve the right to seek regulatory relief and otherwise seek redress from each other regarding performance and implementation of this Agreement. In the event the Commission or FCC rejects this Agreement in whole or in part, the Parties agree to meet and negotiate in good faith to arrive at a mutually acceptable modification of the rejected portion(s); provided that such rejected portion(s) shall not affect the validity of the remainder of this Agreement.

8.6 The Parties acknowledge that the terms of this Agreement were established pursuant to an order of the Commission. Any or all of the terms of this Agreement may be altered or abrogated by a successful challenge to the Agreement (or to the order approving the Agreement) as permitted by applicable law. By signing this Agreement, the Parties do not waive their right to pursue such a challenge.

## **SECTION 9 INDEMNIFICATION**

9.1 Each Party agrees to release, indemnify, defend and hold harmless the other Party from and against all losses, claims, demands, damages, expenses, suits or other actions, or any liability whatsoever, including, but not limited to, costs and attorneys' fees (collectively, a "Loss") incurred by the indemnified Party to the extent that such Loss is: (a) suffered, made, instituted, or asserted by any other person, relating to personal injury to or death of any person, or for loss, damage to, or destruction of real and/or personal property, whether or not owned by others, incurred during the term of

this Agreement and to the extent legally caused by the acts or omissions of the indemnifying Party, regardless of the form of action; or (b) suffered, made, instituted, or asserted by the indemnifying Party's own customer(s) against the indemnified Party arising out of the indemnified Party's provision of services to the indemnifying Party under this Agreement, except to the extent the Loss arises from a breach of this Agreement by the indemnified Party. Notwithstanding the foregoing indemnification, nothing in this Section 9 shall affect or limit any claims, remedies, or other actions the indemnifying Party may have against the indemnified Party under this Agreement, any other contract, or any applicable Tariff(s), regulations or laws.

9.2 The indemnification provided herein shall be conditioned upon:

9.2.1 The indemnified Party shall promptly notify the indemnifying Party of any action taken against the indemnified Party relating to the indemnification, provided that failure to notify the indemnifying Party shall not relieve it of any liability it might otherwise have under this Section 9 to the extent it was not materially prejudiced by such failure of notification.

9.2.2 The indemnifying Party shall have sole authority to defend any such action, including the selection of legal counsel, and the indemnified Party may engage separate legal counsel only at its sole cost and expense. In the event the indemnifying Party does not accept the defense of any such action, the indemnified Party shall have the right to employ counsel for its own defense at the expense of the indemnifying Party.

9.2.3 In no event shall the indemnifying Party settle or consent to any judgment pertaining to any such action without the prior written consent of the indemnified Party, which consent shall not be unreasonably withheld.

9.2.4 In any action for which indemnity is sought, the indemnified Party shall assert any and all provisions in applicable tariffs that limit liability to third parties as a bar to any recovery by the third party claimant in excess of applicable limitations of liability.

9.2.5 The indemnified Party shall offer the indemnifying Party all reasonable cooperation and assistance in the defense of any such action.

## **SECTION 10 LIMITATION OF LIABILITY**

10.1 Neither Party shall be liable to the other for any indirect, incidental, special or consequential damages arising out of or related to this Agreement or the provision of service hereunder. Notwithstanding the foregoing limitation, a Party's liability shall not be limited by the provisions of this Section 10 in the event of its willful or intentional misconduct, including gross negligence. NYNEX shall be liable to MCI for lost revenues resulting from NYNEX's breach of this Agreement only to the same extent that NYNEX's Tariffs provide liability for NYNEX end user subscribers' revenue losses. A Party's liability shall not be limited with respect to its indemnification obligations.

## **SECTION 11 REMEDIES**

11.1 The obligations of the Parties and the services offered under this Agreement may be unique. Accordingly, in addition to any other available rights or remedies, either Party may sue in equity for specific performance.

11.2 In the event either Party fails to switch a subscriber to the other Party's service as requested through a service request from the other Party, within any applicable intervals set forth in this Agreement or required by applicable Law, or erroneously switches the other Party's subscriber away from that Party, then such act (including the continued provision of Telecommunications Services to such subscriber by the Party erroneously switching or failing to switch) shall be deemed an improper change in subscriber carrier selection commencing with the time at which such Party erroneously failed to switch such subscriber, or erroneously switched such subscriber. If such an improper change in subscriber carrier selection should occur, the rights and obligations of the Parties shall be determined in accordance with the regulations pertaining to such conduct on the part of Interexchange Carriers as set forth in the FCC's Rules and Regulations, Part 64, Subpart K, as these may be amended from time to time. For the purpose of this Section 11, MCI and NYNEX shall be deemed an "Interexchange Carrier."

11.3 At such time as the FCC or other competent regulatory body adopts regulations

implementing 47 U.S.C. Section 258 or otherwise adopt regulations applicable to illegal or improper changes in local service, then such regulations shall supersede those applicable to Interexchange Carriers for the purposes of this Section 11.

11.4 Unless otherwise specifically provided hereunder, all rights of termination, cancellation or other remedies prescribed in this Agreement, or otherwise available, are cumulative and are not intended to be exclusive of other remedies to which the injured Party may be entitled at law or equity.

## **SECTION 12 INTELLECTUAL PROPERTY RIGHTS**

12.1 Any intellectual property which originates from or is developed by a Party shall remain in the exclusive ownership of that Party. Except for a limited license to use a Party's patents or copyrights to the extent necessary for the Parties to use any facilities or equipment (including software) or to receive any service solely as provided under this Agreement, no license in patent, copyright, trademark or trade secret, or other proprietary or intellectual property right now or hereafter owned, controlled or licensable by a Party, is granted to the other Party or shall be implied or arise by estoppel.

12.2 NYNEX shall indemnify MCIIm with respect to MCIIm's use, pursuant to the terms of this Agreement, of intellectual property associated with any new NYNEX network equipment or software acquisitions. NYNEX warrants that it will not enter into any licensing agreements with respect to new NYNEX network equipment or software acquisitions that contain provisions that would disqualify MCIIm from using or interconnecting with such network equipment or software pursuant to the terms of this Agreement. NYNEX also warrants that it has not and will not intentionally modify any existing licensing agreements for existing network equipment or software in order to disqualify MCIIm from using or interconnecting with such network equipment or software pursuant to the terms of this Agreement. To the extent that the providers of equipment or software in NYNEX's network provide NYNEX with indemnities covering intellectual property liabilities and those indemnities allow a flow through of protection to third parties, NYNEX shall flow those indemnity protections through to MCIIm. NYNEX will inform MCIIm of any pending or threatened intellectual property claims relating to NYNEX's network of which NYNEX is aware and will update that notification periodically as needed, so that MCIIm receives maximum notice of any intellectual property risks it might want to address. Notwithstanding any part of this Section 12, MCIIm retains the

right to pursue legal remedies against NYNEX if NYNEX is at fault in causing intellectual property liability to MCI.

12.2.1 For purposes of Section 12.2, NYNEX's obligation to indemnify shall include the obligation to indemnify and hold MCI harmless from and against any loss, cost, expense or liability arising out of a claim that MCI's use, pursuant to the terms of this Agreement, of such new NYNEX network equipment or software infringes the intellectual property rights of a third party. Moreover, should any such network equipment or software or any portion thereof provided by NYNEX hereunder become, or, in NYNEX's reasonable opinion, be likely to become, the subject of a claim of infringement, or should MCI's use thereof be finally enjoined, NYNEX shall, at its immediate expense and at its choice:

12.2.1.1 Procure for MCI the right to continue using such material; or

12.2.1.2 Replace or modify such material to make it non-infringing provided such replacement or modification is functionally equivalent.

## **SECTION 13 CONFIDENTIALITY**

13.1 For the purposes of this Section 13, "Confidential Information" means the following information disclosed by one Party ("Discloser") to the other Party ("Recipient") in connection with this Agreement:

13.1.1 All information disclosed by either Party to the other pursuant to Attachments I-X of this Agreement arising from the performance of this Agreement, including, but not limited to, books, records, documents and other information disclosed in an audit performed pursuant to this Agreement; and

13.1.2 Such other information as is identified as Confidential Information in accordance with Section 13.2.

13.2 All information which is to be treated as Confidential Information under Section 13.1.2 shall:

13.2.1 If in written, graphic, electromagnetic, or other tangible form, be marked as "Confidential Information"; and

13.2.2 If oral, (i) be identified by the Discloser at the time of disclosure to be "Confidential Information", and (ii) be set forth in a written summary which identifies the information as "Confidential Information" and is delivered by the Discloser to the Recipient within ten (10) days after the oral disclosure.

13.2.3 Each Party shall have the right to correct an inadvertent failure to identify such oral information as Confidential Information by giving written notification within thirty (30) days after the information is disclosed. The Recipient shall, from that time forward, treat such information as Confidential Information.

13.3 In addition to any requirements imposed by law, including, but not limited to, 47 U.S.C. § 222, for a period of three (3) years from the receipt of Confidential Information from the Discloser, except as otherwise specified in this Agreement, the Recipient agrees:

13.3.1 To use the Confidential Information only for the purpose of performing under this Agreement, including, to the extent applicable, the planning and operation of the Recipient's network; and

13.3.2 To use the same degree of care that it uses with similar confidential information of its own, to hold the Confidential Information in confidence and to disclose it to no one other than the directors, officers and employees of the Recipient and the Recipient's Affiliates, having a need to know the Confidential Information for the purpose of performing under this Agreement.

13.4 A Recipient may disclose the Discloser's Confidential Information to a third party agent or consultant, provided that prior to such disclosure the agent or consultant has executed a written agreement of non-disclosure and non-use comparable in scope to the terms of this Section 13.

13.5 The Recipient may make copies of Confidential Information only as reasonably necessary to perform its obligations and exercise its rights under this Agreement. All

such copies shall bear the same copyright and proprietary rights notices as are contained on the original.

13.6 The Recipient shall return all Confidential Information defined in Section 13.1.2 in the format in which it was received from the Discloser, including any copies made by the Recipient, within thirty (30) days after a written request is delivered to the Recipient, and/or destroy all such Confidential Information, except for Confidential Information that the Recipient reasonably requires to perform its obligations under this Agreement. If the Recipient loses or makes an unauthorized disclosure of the Discloser's Confidential Information, it shall notify the Discloser immediately and use reasonable efforts to retrieve the lost or improperly disclosed information.

13.7 The requirements of this Section 13 shall not apply to Confidential Information:

13.7.1 Which was in the possession of the Recipient free of restriction prior to its receipt from the Discloser;

13.7.2 After it becomes publicly known or available through no breach of this Agreement by the Recipient, the Recipient's Affiliates, or the directors, officers, employees, agents, or contractors, of the Recipient or the Recipient's Affiliates;

13.7.3 After it is rightfully acquired by the Recipient free of restrictions on its disclosure;

13.7.4 Which is independently developed by personnel of the Recipient; or

13.7.5 To the extent the disclosure is required by law, or made to a court, or governmental agency for the purpose of enforcing its rights under this Agreement; provided the Discloser has been notified of an intended disclosure promptly after the Recipient becomes aware of a required disclosure or decides to make such a voluntary disclosure to enforce its rights, the Recipient undertakes reasonable, lawful measures to avoid disclosing the Confidential Information until the Discloser has had reasonable time to seek a protective order, and the Recipient complies with any protective order that covers the Confidential Information to be disclosed.



13.8 Each Party's obligations to safeguard Confidential Information disclosed prior to expiration, cancellation or termination of this Agreement shall survive such expiration, cancellation or termination.

13.9 Confidential Information shall remain the property of the Discloser, and the Discloser shall retain all of the Discloser's right, title and interest in any Confidential Information disclosed by the Discloser to the Recipient. Except as otherwise expressly provided elsewhere in this Agreement, no license is granted by this Agreement with respect to any Confidential Information (including, but not limited to, under any patent, trademark, or copyright), nor is any such license to be implied, solely by virtue of the disclosure of any Confidential Information.

13.10 Each Party agrees that the Discloser would be irreparably injured by a breach of this Section 13 by the Recipient, the Recipient's Affiliates, or the directors, officers, employees, agents or contractors of the Recipient or the Recipient's Affiliates, and that the Discloser shall be entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any breach of the provisions of this Section 13. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 13, but shall be in addition to any other remedies available at law or in equity.

13.11 The provisions of this Section 13 shall be in addition to and shall not limit, alter, define or contradict any provisions of applicable law, including, but not limited to, 47 U.S.C. § 222, and are not intended to constitute a waiver by a Party of any right with regard to protection of the confidentiality of information (whether or not defined as "Confidential Information" for purposes of this Agreement) of the Party or its customers provided by applicable law.

13.12 Without in any way limiting the foregoing provisions of Section 13, each Party shall comply with 47 U.S.C. § 222, any implementing rules, regulations, and orders thereunder, and other federal and state rules and regulations addressing Customer Proprietary Network Information ("CPNI") and Carrier Information. A Party shall not access (including, but not limited to, through electronic interfaces and gateways provided under this Agreement), use or disclose CPNI or other customer information unless the Party has obtained any customer authorization required by applicable law for such access, use and/or disclosure. By accessing, using or disclosing CPNI or other customer information, a Party represents and warrants that the Party has obtained any